MEMORANDUM SUBMITTED TO THE DEPARTMENTAL COMMITTEE ON SECURITY AND NATIONAL ADMINISTRATION INQUIRY TO THE MIGUNA MIGUNA DEPORTATION AND REMOVAL

Tuesday, April 10, 2018

SUBMITTED BY:
The Kenyan Section of the International Commission of Jurists (ICJ Kenya)
Laikipia Road, Laikipia Townhouses, Kileleshwa,
P.O BOX 59493 – 00200
NAIROBI
Email: info@icj-kenya.org/samwel.mohochi@icj-kenya.org

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INTRODUCTION

1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya) is a non-governmental membership organization constituting of a body of jurists drawn from members of the Bench and Bar in Kenya and the region. It is the only autonomous national section of the International Commission of Jurist based in Geneva. ICJ Kenya has been working in Kenya and around Africa since 1959 and its mission is to promote human rights, justice and democracy in Kenya and around Africa through the application of legal expertise and international best practices.

2. ICJ Kenya wishes to address and present this Memorandum of Views to the Departmental Committee on Security and National Administration (henceforth Departmental Committee) on key human rights and rule of law issues arising out of the deportation of Miguna Miguna on the 6th February 2017, defiance of court orders by State officials and responses from the State officers in respect of the subject matter and subsequent removal from the Jomo Kenyatta International Airport on the 28th March 2017 as undocumented passenger..

3. Based on ICJ Kenya's observations, we note with great concern the disturbing confrontational trend between the Legislature, the Judiciary and the Executive culminating in unfortunate events and instances of blatant disobedience of court orders, in particular by the Executive.

4. In ICJ Kenya's considered opinion, this confrontation is increasingly undermining the principle of Separation of Powers embedded in the Constitution of Kenya 2010 intended to ensure checks and balances between the three organs of the government and in the independence of the Judiciary.

5. We are cognizant of the fact that separation of powers refers to the division of government responsibilities into distinct branches to limit any one branch from exercising

the core functions of another and delimits mandate and responsibilities. The intent is to prevent the concentration of power and provide for checks and balances.

6. We wish to reiterate that the role of interpreting the Constitution remains within the exclusive province of the Judiciary and any allegation of contravention of the Constitution is subject to judicial interpretation.

7. Overall, this confrontation, disobedience of court orders and lack of individual responsibility by state officers is exposing the entire state to national security risks and undermining the rule of law contrary to the tenets characteristic of an open and democratic States in the region and the world at large.

8. In sum, this Memorandum provides insights into the procedural and substantive implications in respect of the subject matter before the Department Committee, specifically in relation to the rule of law and human rights. It further interrogates the extended and scope of individual responsibility of State officers on disobedience of court orders and examines the rising tension between the judiciary and the Executive. The Memorandum raises questions to the Department Committee intended to inform the process and resulting recommendations of the Committee for further action. Finally, the Memorandum makes recommendations that the Departmental Committee should consider even as it works towards finalising its report.

BACKGROUND

9. We have followed with keen interest the Departmental Committee's inquiry into the mandate, management, activities, administration and operation of the Ministry of Interior and Coordination of National government, the National Police Service and the Department of Immigration with regards to the handling of Mr. Joshua Miguna Miguna.

10. Pursuant to Standing Order no.216, we acknowledge that the Departmental Committee inquiry into the activities and operations of the Ministry of Interior and Coordination of,

is an important quasi-judicial process. Thus the attendant scope, reach and consequent recommendations must holistically address any shortcomings and provide concrete and realizable solutions.

11. From the outset, we contend that the Department Committee processes should interrogate all aspects relating to this matter which includes;

    a) Whether the Ministry and its relevant departments filed a return in Court Pursuant to the Ex-parte issuance of Search and Seize order made in Re: **Miscellaneous Application No. 396 of 2018 at Nairobi Chief Magistrate's Court?**

    b) Whether the action by the Ministry between the 2nd and 6th of February 2018 to take a criminal suspect facing eminent prosecution and deport him usurped the powers of the Director of Public Prosecution (DPP) relating to the discretion to prosecute?

    c) How the decision to arraign Mr. Miguna Miguna in Kajiado Law Courts was taken and what was the role of the DPP?

    d) Whether it was justifiable for the Ministry, the National Police Service and the DPP to arraign Mr. Miguna Miguna in court and before the hearing and determination of his case deport him?

    e) Whether the action of the Ministry and decision of Mr. Fred Matiangi of declaring Dr. Miguna Miguna as, "*undesired emigrant*" and deportation, ousted the jurisdiction, authority and independence of the DPP?

    f) Whether the action of deporting Mr. Miguna Miguna instead of preferring additional criminal charges against him in consultation with the DPP to whom Mr. Miguna was subject was illegal?

    g) Was the action of deporting Mr. Miguna Miguna instead of preferring additional criminal charges reasonable and justifiable in an open and democratic state like Kenya that is based on human dignity, equality and freedom?

h) What was the role of the DPP on the deportation Issue?

i) Whether the Ministry and relevant department instituted investigations and prosecution of public officers involved in unlawful issuance of national identity card and passport to Mr. Miguna Miguna?

j) Whether Dr. Fred Matiangi, Joseph K. Boinnet and Major Gen. Rtd. Gordon Kihalangwa have paid the fines issued against them for contempt of court?

k) Whether the Ministry and relevant departments had jurisdiction to take a criminal suspect subject to an intended prosecution by the DPP, and whether such action would undermine the constitutional powers and functions of the DPP?

l) Whether the Ministry is intending to pursue criminal prosecutions following its disclosure to the Committee the potential of many other criminal acts having been committed by either Mr. Miguna or other State and public officers? And whether the DPP is aware and adequately involved?

m) Whether it is in the public interest and public policy for the Attorney General to file appeals on behalf of State officers and public officers convicted and sentenced in their personal capacity for contempt of court or any other offences?

CHRONOLOGY OF EVENTS

12. Mr. Miguna Miguna's home at 486 Runda Meadows in Runda Estate in Nairobi, was raided on 2nd February, 2018, at about 6.00 am. This followed the issuance of a search and seize warrants applied by Chief Inspector Joseph Gichuki and issued ex-parte in <u>Miscellaneous application No. 396 of 2018 at Nairobi Chief Magistrate's Court.</u>

13. Miguna Miguna was detained for five days incommunicado. He was subsequently arraigned at the Kajiado Law Courts on February 6th 2018 and charges preferred against

him pursuant to Charge **Sheet attached as Annex II to the this Memorandum**. Before he could take plea, it was ordered that he be produced before Justice Luka Kimaru's court at Nairobi High Court, Milimani on 6th February 2018 by 2:00 pm.

14. However, this did not materialize and he was later deported to Canada additionally, subsequent court orders by Justice Roselyn Aburili, Justice George Odunga, Justice Luka Kimaru and Justice Chacha Mwita that in sum provided that the deportation of Mr. Miguna Miguna was contrary to the provisions of the law and that he was to be released and presented before, court however these orders by the Judges were disregarded. This raises further concerns regarding why this court orders were disobeyed.

15. On the 26th March 2018 Mr. Miguna Miguna returned to Kenya, upon his arrival, he was denied re- entry into the country as it was stated he did not have his travel documents, he was detained as an undocumented adult male. He was to sign documents that were presented to him form the Department of Immigration that would have seen him permitted in the county on six months tourist visa. There was an attempt to deport him to Dubai aboard an Emirates Flight, but he refused to travel to Dubai. A case was filed before Lady Justice Roselyn Aburili who gave orders that Mr. Miguna Miguna be released from the Airport's detention and be presented before the Court. The judge's Orders were neither adhered to nor complied with and subsequently, he was deported to Dubai on 28th March 2018 from where he was taken to Canada.

16. During this period and prior to his second deportation, hundreds of police officers were mobilized at the Jomo Kenyatta International Airport when Mr. Miguna Miguna returned to the Country on 26th March 2018. The police officers forced Mr. Miguna Miguna into an Emirates plane for removal out of Kenya as an ***"undocumented passenger"***, raising questions of national security, infringement of human rights and international law.

17. Relatedly, Journalists from different media houses to include Nation Media, the Standard Group and Citizen, who were covering the unfolding events were attacked by security agents comprising of the General Service Unit and plain clothes officers, who used excessive force to include use of clubs and physical assaults by slapping the journalists.

Several journalist were seriously injured during the incidence at the airport,[1] this further exacerbating the curtailment of freedom of information and expression. These attacks were condemned as they were uncalled for.

18. Further, the legal representatives of Miguna Miguna among them Hon. James Orengo, Mr. Cliff Ombeta, Ms. Julie Soweto, Dr. John Khaminwa and Mr. Nelson Havi, who had obtained the Orders by Justice Aburili were prevented from serving the state officers with the court orders that had been issued by the court. This forced the lawyers to affix the orders at the airports conspicuous officers for the relevant officers to comply with them, this however did not happen.

19. The purported removal created "an incident" that posed a risk that could have jeopardized the safety of the passengers, airline crew, airport personnel and aircraft during the incident at the airport which is subject to the Civil Aviation Act (No. 21 of 2013) The Civil Aviation (Security) Regulations, 2015 and it is of critical importance to interrogate the aspect.

ANALYSIS OF THE EMERGING ISSUES

The Independence of Judiciary

20. ICJ Kenya's considered position and view in relation to the ongoing contestation between the Executive and the Judiciary depicts a lack of accountability, respect for the rule of law and appreciation of the principle of separation of powers by the Executive – these are fundamental constitutional principles and that non-negotiable. The constitutional and legal basis has been elaborated in two most recent press releases issued by ICJ Kenya on 30th January 2018 and 7th February 2018 respectively.

[1] Daily Nation Tuesday March 27th 2018 <https://www.nation.co.ke/news/Police-attack-journalists-as-they-cover-Miguna-drama-at-JKIA/1056-4359400-o8qj3iz/index.html on 11/4/2018 at 11:11 am>

(Attached herewith and Marked as Annexure 1 and Annexure 2 are press release titled, "BREACH OF CONSTITUTIONAL RIGHTS AND FREEDOMS WITH THE SWITCH OFF OF RADIO SPECTRUM OF TELEVISION STATIONS BY THE COMMUNICATION AUTHORITY OF KENYA" And "DISREGARD OF COURT ORDERS BY PUBLIC OFFICIALS" respectively).

21. We have observed with great concern at the worrisome trend in the disobedience of court orders by the Executive. More importantly, this is not a new phenomenon. It is on record that the Executive and Legislature have consistently disregarded court orders especially when decisions have not been rendered in their favor. The recent events outlined above only serve to bring to reflect the orientation of the Executive and the Legislature towards the rule of law.

22. We specifically single out and condemn in the strongest terms the comments by the Cabinet Secretary for Internal and Coordination of National Government Security Dr. Fred Matiangi regarding the Judiciary. The defensive poster taken by the Cabinet Secretary at his appearance before the Departmental Committee, where he purported to paint the judiciary as a 'compromised and influenced by external curtails' require further interrogation by the Departmental Committee. [2]

23. Further, we reiterate that there are legal mechanisms available if one is dissatisfied with a court ruling or decision – there exists the right to a review or appeal. We observe that allowing these type of unfounded and unsubstantiated allegations to foster before a court of public opinion not only feeds into undermining public confidence in the judiciary but also fuels the impunity and arrogance that has characterized the executive action.

Recommendations

In respect of the Independence of the Judiciary, we recommend as follows;

1. *That the Minister offers a public apology to the Judiciary for his reckless comments and required by the Departmental Committee to substantiate his allegations against judiciary;*

[2] Daily Nation, April 24th 2018, page 4.

2. *That Departmental Committee reiterates the need to obeyed and respect court orders and if dissatisfied, utilize available legal avenues;*
3. *A multi-agency team is constituted to audit court orders issued against the Executive;*

Procedural Safeguards and Guarantees

Breach of Fundamental Rights and Freedoms

24. ICJ Kenya affirms the constitutional provisions that provide for the rights of arrested persons. These provisions require that an arrested person should be brought before a court of law not later than twenty-four hours after arrest or if the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day.[3]

25. Mr. Miguna Miguna was arrested on 2nd February 2018. Justice Luka Kimaru issued orders for his release on anticipatory bail and directed that he is presented before court on 5th February since 2nd February was a Friday.

26. However, the Director of Criminal Investigations and the Inspector General failed to not only release him on 2nd February 2018 but also produce him in court on 5th February 2018.This infringed his rights under Article 29(a)[4] and Article 49(1)(f)[5]. The same court directed that the Director of Criminal Investigations and the Inspector General should appear before the court on 6th February 2018 but they failed to do so.

27. It is noteworthy that Court records in this instant indicate that all Respondents were heard and had representation by the ODPP Counsels including Senior Counsel Fred Ngatia which negates the assertion by Dr. Fred Matiangi that they were not given opportunity to be heard.

[3] Article 49(1)(f)
[4] Every person has the right to freedom and security of person which includes the right not to be deprived of his freedom arbitrarily or without just cause
[5] An arrested person has the right to be brought before a court as soon as reasonably possible, but not later than –
i. Twenty-four hours after being arrested; or
ii. If the twenty-four hours ends outside ordinary court hours, or on a day that is not ordinary court day, the end of the next court day

28. We note with further concern that the Director of Criminal Investigations ,Inspector General and the Ministry of Interior and Coordination of National Government (because the National Police Service and the Directorate of Immigration are both in this Ministry) acted contrary to provisions of Article 10 of the Constitution when they were held in contempt of court[6] for the following instances;

    I. Acted in clear breach of the orders issued by Justice Luka Kimaru on 2nd February 2018 that required them to release the Miguna Miguna from their custody pending further orders of the court on 5th February 2018;

    II. Failed to appear personally before the court to show cause why they acted in contempt of the orders of the court ;

    III. Directed their officers to take Dr. Miguna Miguna to Kajiado Chief Magistrate's Court, Hon. Edwin Mulochi (RM) directed the officers to produce Miguna Miguna before Justice Luka Kimaru by 3.00 p.m. on the said 6th February 2018 and they failed to do so;

    IV. The Director of Immigration made the decision to take Miguna Miguna to the Inland Container Depot Police Station at Embakasi instead of producing him before the court with a view to facilitating the Director of Immigration to have his custody. It was not by chance that the officers under the Director of Immigration found Miguna Miguna at the precinct of the said Inland Container Depot Police Station;

    V. Failed to comply with the conservatory orders issued by Justice Chacha Mwita suspending the declaration by Dr. Matiangi on 6th February 2018 under section 43(1) of the Kenya Citizen and Immigration Act,2011 declaring Miguna Miguna not being of a Kenyan citizen be removed pending the hearing and determination of the petition filed by Miguna Miguna;

    VI. Failed to comply with the order of Lady Justice Roselyn Aburili when she ordered them to release Miguna Miguna from detention at the Jomo Kenyatta International Airport; and

    VII. Failed to appear before Justice Odunga when they were summoned.

[6] **Miguna Miguna v Fred Matiangi and others, Constitutional Petition 51 of 2018.** Odunga J found the Cabinet Secretary, the Inspector General of Police and Principal Secretary – Immigration being in contempt of court and each were fined Kenya Shillings 200,000.

29. The Ministry of Interior and Coordination of National Government, the Director of Criminal Investigations, the Inspector General and the Director of Immigration infringed Miguna Miguna's right to Fair Administrative action which is protected under Article 47 of the Constitution when they deported him from Kenya without according him a chance to be heard contrary to the provisions of the Kenya Citizenship and Immigration Act, 2011.

30. The Ministry of Interior and Coordination of National Government, the Director of Criminal Investigations, the Inspector General and the Director of Immigration invoked a legal fiction when they said that that they had no jurisdiction after Miguna Miguna returned as an undocumented immigrant. Jurisprudence relating to the legal status on International and Transit Zone or No Man's Land is such that;

    - Such zones do not have extraterritorial status.
    - These areas remain part of the States Territory under international public law because they are still subject to its authority and control.

    (Attached herewith and Marked as Annexure 3 Is ECtHR Amuur vs France 19776/92 26th June 1996[7])

31. ICJ Kenya contends that the Ministry of Interior and Coordination of National Government, the Director of Criminal Investigations, the Inspector General and the Director of Immigration could have handled Miguna Miguna in a professional and humane manner befitting of the respective offices when he arrived at the Jomo Kenyatta International Airport on 26th March 2018 after his subsequent second deportation.

32. The manner in which hundreds of police officers were mobilized for the operation that saw Miguna Miguna forced into an Emirates plane raises questions of national security and individual rights and fundamental freedoms. The deployment of the many police

[7] The Court took note of the fact that holding third country nationals in international zones involved restrictions upon liberty. Nonetheless, it acknowledged that such confinement was acceptable if it was accompanied by the appropriate safeguards for the person concerned, in order to enable States to prevent unlawful immigration while respecting their international obligations. What is more, it added that such restriction could not be prolonged excessively

officers to handle one person was not only excessive but also unreasonable and was reasonably foreseeable that it could scare and endanger the life of innocent travelers.

33. Excessive use of force by the police officers to force Miguna Miguna into the airplane violated his right to human dignity which is protected under Article 28 and his right to freedom and security of the person which includes the right not to be subjected to any form of violence from either public or private sources which is protected under Article 29(c) of the Constitution.

34. ICJ Kenya further contends that there was potential breach of the Chicago Convention, Civil Aviation Act (No. 21 of 2013) and the Civil Aviation (Security) Regulations, 2015 to wit; were there unauthorized (without special passes) individuals within the security zone on the on the night of the 24th March 2018, did the operator notify the regulator of the incidence where there was physical confrontation at the entrance of an aircraft by firearm wielding Kenya government officials (a mandatory requirement)? What action has the Air transport regulator undertaken with regards to this incident?

35. ICJ Kenya noted with further concern the harassment and intimidation of Miguna Miguna's legal representatives who were not only deprived the right to access their client but also refrained from serving the state officers with the court orders. We contend that this went against the spirit and letter of Constitution including Kenya's regional and international obligations.

36. ICJ Kenya wishes to reiterate that widely accepted norm that states must adopt and maintain effective measures to ensure the safety and independence of lawyers and the freedom to engage in their professional activities as lawyers without reprisals. The United Nations' *Basic Principles on the Role of Lawyers* ("*Basic Principles*")[8] requires state to guarantee the right to legal representation and ensure the independence and safety of lawyers. In particular, Article 16 of the *Basic Principles* provides that lawyers must be able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference and that lawyers shall not suffer, or be threatened with,

[8] Available on : http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx,

prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Recommendations

From the foregoing, ICJ Kenya strongly believes

a) That the Ministry of Interior and Coordination of National Government, the Director of Criminal Investigations, the Inspector General and the Director of Immigration cannot purport to enforce the law by breaking the law.

b) The mere fact that they are public officers means that they should lead by example and obey court orders. ICJ Kenya recommends that:[9]

c) The Ministry of Interior and Coordination of National Government, the Director of Criminal Investigations, the Inspector General and the Director of Immigration comply with the various Court Orders, after which they can defend the validity of their actions in Court

d) The Departmental Committee summon the Law Society of Kenya to explain what action it has taken to adequately safeguard the security and Independence of the lawyers who are intimidated and harassed as a result of discharged their professional duties.

Finally, ICJ Kenya wishes to pose the following questions to the Departmental Committee's further interrogation

i. Was the incident reported by the Air operator Emirates?
ii. What was the role of the Kenya Airports Authority as the agency managing airports?
iii. Were special passes issued to access the security zones?

[9] The Constitution of Kenya, 2010 Chapter Six makes provision for Leadership and Integrity which states clearly how State officers are to conduct themselves. The Leadership and Integrity Act No. 19 of 2012, gives effect to, and establishes procedures and mechanisms for the effective administration of Chapter Six of the Constitution.

Substantive Considerations

Acquisition, Renunciation and Dual Citizenship in Kenya (*Questions of Facts and Evidence)*

37. ICJ Kenya retaliates that Article 14 (1) of the Constitution of Kenya, provides that a person is a citizen by birth regardless of whether they were born in or out of Kenya provided that either the mother or father is or was a citizen.

38. We note that Article 14(5) clearly states that a person who is a Kenyan citizen by birth but ceased to be a citizen after acquisition of another country's nationality, is entitled under the law on application to regain the Kenyan citizenship. This is further provide for under Section 10 of the Kenya Citizenship and Immigration Act[10]

39. The Constitution under Article 16 makes provisions for dual citizenship and makes emphasis that a citizen does not lose citizenship by registration or by acquiring the citizenship of another country.

40. The Kenya Citizenship and Immigration Act, makes provisions under Section 8 that re-emphasises the provisions of Article 16 of the Constitution, 2010 on dual citizenship. The law makes it clear that a person bearing dual citizenship is entitled to among others a passport and other travel documents and to such other rights as shall be the entitlement of citizens.

41. We are concerned in the manner in which the Department of Immigration handled the re-application of Miguna Miguna as a Kenyan Citizen. We contend that the laid down procedure as provided for under the law was not adhered to. We reiterate that such an application should be made voluntarily and not through either coercion or duress.

42. It is in the public domain that Miguna Miguna is holder of a Kenyan Identification Card number 2790598, which was issued at Westlands on 12.11.2012. Further it is on record

[10] No 12 of 2011.

that Miguna Miguna was cleared by the Independent Electoral and Boundaries Commission (IEBC) to run for public office. Questions arise as to how he not only acquired the identification document but also how IEBC was able to give him clearance to run for public office.

Recommendations

From the foregoing ICJ Kenya notes with concern that the laid down procedures on dual citizenship and reapplication as a Kenya Citizen were neither followed nor adhered to in the matter of Miguna Miguna at the Jomo Kenyatta International Airport.

In this regards ICJ Kenya recommends that;

I. The Procedures and Regulations laid down in relation to reapplication of the citizenship of Miguna Miguna be strictly adhered to as provided by the Constitution and Statute.

II. That the pending the Petition before the High Court in relation to his Citizenship the merits or otherwise on the same should be avoided lest the sub judice rule is contravened.

Individual responsibility for direct or indirect acts and omissions in relation to the scenario at the Jomo Kenyatta International Airport.

43. ICJ Kenya strongly believes that following the incidence at the Jomo Kenyatta International Airport several individuals should be held responsible for the acts and omission at JKIA during the dramatic deportation of Miguna Miguna and Investigations should be commenced into the manner the decisions were taken and determine suitability to hold public offices.

44. We believe that the following individuals need to be summoned by the Committee as follows;

The Director at the Directorate of Immigration and Registration of Persons

It is in the public domain that Dr. Miguna Miguna is holder of a Kenyan National Identity Card whose number is 2790598, that was issued in Westlands on 12.11.2012. We note with concern that the said identification card was stated to have been acquired illegally by the former Director

General of Immigration Maj-Gen (Rtd) Gordon Kihalang'wa now Principal Secretary, State Department of Immigration. These raises the following questions:

- How was the identification card acquired?
- Who processed the application for the said card?
- And why was it issued given that Miguna Miguna is stated to be a Canadian Citizen and not a Kenyan Citizen?
- Why was no action taken immediately it was learnt the said Identification Card had been issued contra the procedures provide by law?
- How many of his officers were involved in this alleged criminal act?
- What action(s) has he since undertaken against these officers who may have been involved in this act?

Cabinet Secretary – Ministry of Interior and Coordination of National Government and the Inspector General of the National Police Service

ICJ Kenya believes that the Cabinet Secretary and the Inspector General of Police should bear responsibility for the security breach at JKIA. Armed police men forcefully escorted Miguna Miguna to the aircraft and forced him to board it. The police went beyond their allowed limits at the airport that is, the airside. Serious legal questions arise as to why there was a heavy presence of armed police at the airport and Miguna Miguna escorted by security agents into the aircraft,

Managing Director – Kenya Airports Authority

Jomo Kenyatta International Airport falls within the jurisdiction of the authority. The incidences at the airport exposed the numerous breach of regulations that govern the airport in the country. There were apparent and clear breach of security at the airport and this was done under the authority. It is discernable that the Authority work with security agencies for the provision of security however this is done within clear parameters of the laid out regulations, the incidences at the airport during the dramatic deportation of Mr. Miguna Miguna was in clear breach of these regulations.

The Managing Director needs to explain whether;

- Special passes where issued to the security agents who escorted Mr. Miguna Miguna to the aircraft?

- What actions were taken in response to the security breach?

Therefore, the Managing Director of the Kenya Airports Authority should be summoned by the Committee.

Principal Secretary – State Department of Immigration

The Principal Secretary should be summoned the Committee to explain;

- Why Mr. Miguna Miguna was deported from Kenya to Dubai going contrary to a court order issued by Justice Aburili?

- Why the procedures were not followed in relation to the application of Mr. Miguna Miguna's citizenship as a Kenyan?

- Why the laid down procedures were not adhered too in the deportation of Mr. Miguna Miguna?

Director General – Kenya Civil Aviation Authority

The Director General of the Kenya Civil Aviation Authority should be summoned by the Committee to give an explanation on the breaches of regulations at JKIA. The functions of the Authority as stipulated under The Civil Aviation Act, [11] under section 7 is to ensure safety and security of civil aviation. It will be important that the Authority give a clear account of what actions it took after the breach of security at the airport.

Suitability to hold office

The action and omission by State officers, including disobedience of court orders and violation of fundaments human rights, raises serious doubt as to their suitability to hold public offices. They have breached the provisions of chapter six of the constitution on leadership and integrity.

[11] No 21 of 2013

Recommendations

ICJ Kenya recommends the following:

a) State officials to be held individually liable for criminal actions. The individuals who are the office bearers should be summoned before the committee and held responsibility for their acts and omissions as well as those of their subordinates in relation to the incident at JKIA.

b) Appropriate action to be taken against officials found not suitable to hold public offices including dismissal from work.

CONCLUSION

ICJ Kenya strongly believes in the adherence to the rule of law, respect for human rights, and upholding fundamental freedoms. In this regards, we recommend that the committee and relevant offices take the necessary steps and actions against individuals who were in breach of the law. We strongly urge that due procedures and regulations provided by the law should be adhered to strictly.